SUPPLEMENTAL BRIEF

(17)

No. 84-262

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY,

Petitioner,

v.

PUEBLO OF SANTA ANA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION OF RESPONDENT FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AND SUPPLEMENTAL BRIEF

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April, 1985

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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Respondent, Pueblo of Santa Ana, respectfully moves pursuant to Rule 35.5, .6 of the Rules of this Court for leave to file the attached supplemental memorandum addressing two decisions rendered after oral argument in this case. The two decisions were in *Chemical Manufacturer's Association v. N.R.D.C.*, 53 U.S.L.W. 4193 (U.S. February 27, 1985), and *County of Oneida v. Oneida Indian Nation*, 53 U.S.L.W. 4425 (U.S. March 4, 1985), which decided questions of admin-

istrative interpretation of congressional intent and legislative ratification of unlawful transactions in Indian land. Because these same questions are at issue in this case, respondent submits that the recent decisions endorse its position and are appropriately briefed at this time.

Respectfully submitted,

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INTRODUCTION

A week after oral argument in this case, the Court rendered its decision in *Chemical Manufacturer's Association v. N.R.D.C.*, 53 U.S.L.W. 4193 (U.S. February 27, 1985). Because that case addresses the question of the deference due an administrative interpretation, and because of both parties' reliance on *Chevron, U.S.A. Inc. v. N.R.D.C.*, 52 U.S.L.W. 4845 (U.S. June 25, 1984), the Court's opinion bears significantly on a major issue in this case. The Court also recently decided *County of Oneida v. Oneida Indian Nation*, 53 U.S.L.W. 4425 (U.S. March 4, 1985), which addressed the question of legislative ratification, another major issue here because it is the basis for the government's disagreement with Santa Ana's position.

ARGUMENT

A. THE COURT'S DECISION IN *CHEMICAL* SUPPORTS RESPONDENT'S POSITION THAT ADMINISTRATIVE ACQUIESCENCE IN MOUNTAIN BELL'S INTERPRETATION OF SECTION 17 OF THE PUEBLO LANDS ACT CONFLICTS WITH CONGRESSIONAL INTENT

Chemical, like *Chevron*, considered major antipollution legislation that is "lengthy, detailed, technical, complex, and comprehensive . . . . " *Chevron* at 4848. The administrative agency in both cases, the Environmental Protection Agency (EPA), was expressly given extensive authority to administer and interpret the acts, together with substantial policy-making discretion. EPA's duties under the statutes also required highly specialized agency expertise. In both cases, the issue centered upon the EPA's elucidation in a rule-making context, of specific sub-sections interpreted by the agency to allow flexibility in the implementation of the regulatory framework, and did not involve the threshold question of the very existence of delegated authority. See *Chemical* at 4196 n. 13. The Court sustained both agency interpretations because they were found

to embody reasonable policy choices committed to the agency's judgment, and were not inconsistent with the language, structure, purpose, and legislative history of the statutes. *Chevron* was unanimous, but *Chemical* was a 5-4 decision. Significantly, both sides in *Chemical* cited *Chevron*, the disagreement arising from divergent views of the legislative history and congressional intent.

The statutory scheme in this case contrasts fundamentally with those in *Chemical* and *Chevron*. For that reason, and because it goes to the very existence of administrative authority, the question here is peculiarly suited to "judicial application of canons of statutory construction." *Barlow v. Collins*, 397 U.S. 159, 165-166 (1970). As shown in respondent's brief, the language, structure, purpose, and legislative history of the statute here under review, the Pueblo Lands Act (Act of June 7, 1924, ch. 331, 43 Stat. 636), all belie Mountain Bell's interpretation of Section 17, a revisionist interpretation unheralded during the extensive debate over the various bills preceding the final Act.

Mountain Bell views Section 17 as a mechanism for future administration of Pueblo land transactions. Its position is that isolated phraseology from the second clause of Section 17 authorized a wholesale delegation of Congress' own pervasive authority over alienation of tribal lands to the Secretary of the Interior and his subordinates within the Bureau of Indian Affairs. Yet Congress has never before or since conferred such authority to approve alienation of unallotted, unceded tribal lands. Instead, the uniform practice of Congress has been to carefully limit and condition Secretarial discretion to approve transactions affecting occupied tribal lands, especially lands needed for subsistence. General authority to sell reservation lands has been given only in conjunction with removal, allotment, or surplus land cessions.[1] The intent attributed to Con-

[1]The Pueblos occupy the same lands they lived upon prior to the arrival of the Spanish in the 1500's. Pueblo lands have never been alloted, and "the Pueblo Indians have never ceded to the United States a single acre of land." H.R. Rep. No. 1748, 67th Cong., 4th Sess. 7 (1923).

gress by Mountain Bell is thus wholly without precedent.

Unlike the legislation considered in *Chevron* and *Chemical*, the Pueblo Lands Act did not delegate expansive discretionary authority. Indeed, the Act is the very model of a statute intended to sharply curb discretion. The system of Pueblo Lands Board investigation and federal court adjudication incorporated a refined checks and balances mechanism. No federal agency was given discretionary authority to approve extinguishment of title, and Congress interposed the federal court as a barrier to administrative overreaching. The Secretary of the Interior was given only an ancillary role, as one member of the Pueblo Lands Board, along with some ministerial duties. Congress plainly left no gap for the exercise of policy-making discretion by the Secretary. *Cf. Chemical* at 4203, 4205; *Chevron* at 4847. This conclusion is strengthened by the fact that in four separate sections Congress directed the Secretary to gather information and report back to Congress for its own consideration (Sections 7, 8, 14, 15), and in the one section plainly intended to confer authority on the Secretary to approve conveyances, Section 16, Congress imposed rigid conditions on how and when that authority would be exercised. Congress clearly intended to maintain an active role in the future, and not to leave the Pueblos' future security to anyone's conscience but its own.

In view of the refined structure of the Pueblo Lands Act and Congress' painstaking limitation of administrative discretion therein, it is inconceivable that Congress abruptly and obliquely delegated extensive authority to the Secretary of the Interior to approve conveyances of Pueblo land unlimited in nature, scope, or terms; and Congress certainly did not leave to the Secretary himself the determination of whether it had made such a radical delegation of power.

In *Chemical*, the majority concluded that the administrative interpretation was not inconsistent with the purpose of the statute and did not threaten to frustrate the operation of the statutory scheme. At 4197-4198. The obverse is true here. The

Pueblo Lands Act effectuated this Court's decision in *United States v. Sandoval*, 231 U.S. 28 (1913), and presaged the decision in *United States v. Candelaria*, 271 U.S. 432 (1926). Congress concluded that *Sandoval* definitely settled the status of the Pueblo tribes, and that under *Sandoval* the Pueblos were "not competent" to sell their lands. Section 17, added to the Act almost as an afterthought, simply reaffirmed the Indian Nonintercourse Act, and thus "insured that restrictions implicit in the decision in *United States v. Sandoval* . . . . would continue in force." *Alonzo v. United States*, 249 F.2d 189 (10th Cir. 1957), *cert. denied*, 355 U.S. 940 (1958).

Congress sought to quiet the Pueblos' titles, assert full federal control over their lands, and remedy the damage caused by unlawful conveyances and the territorial adverse possession statutes. There is no suggestion whatever that Congress intended to place the Pueblos under a unique regime of land supervision, or much less that it intended partially to emancipate them, especially in view of the Court's characterization of the Pueblos in *Sandoval*.

Mountain Bell's interpretation is fundamentally at odds with these manifest purposes of Congress. Substituting the Secretary of the Interior for Congress in the Indian Nonintercourse Act, which Mountain Bell argues was accomplished by Section 17, means that Section 17 supplanted the Nonintercourse Act and conferred Congress' entire policy-making authority on the Secretary. Since Section 17, interpreted as a grant of power, plainly would authorize the alienation of any or all tribal lands, it would have given administrative officers a bald power to disinherit tribes, provided only that tribal leaders could be induced to sign off on the deeds. Such unbounded discretion, especially as to nineteen different tribes, conflicts monumentally with Congress' consistent practice of limiting the interests or the lands that can be conveyed, imposing statutory conditions on conveyances, and requiring the issuance of regulations to govern the transactions.

Mountain Bell's interpretation would completely undermine Section 16, and could have resulted in the subversion of the

entire Act, since Section 17 could have been used to validate old deeds that would otherwise be ineffective to support non-Indian claims under the Act. *See*, e.g., Kelly Report at 39-41; Kelly Exs. 101-106; *Amicus* Br. of Pueblo de Acoma at 1-2, 15-16.

One of the major purposes of the Act was to restore lands to the Pueblos. Sections 6, 19. As stated in the final Senate Report:

> It thus appears that the two sections in substance together provide for a substantial effort to restore to the Indians the lands and water rights which they have lost, or equivalents therefor, and it is not sought to turn over to the Indians any moneys to be expended by themselves. These Indians being wards of the Government, there is an obligation on the part of the Government to make reasonable and proper provision for them. By reason of the loss of lands from various causes, some of these Pueblos do not have enough land to enable them to be self-supporting, and the United States Government has already recognized this situation for some years by making appropriations for their maintenance.

S. Rep. No. 492, 68th Cong., 1st Sess. 8 (1924). If Congress recognized that some Pueblos lacked sufficient land to become self-supporting and intended that Pueblo lands be restored and consolidated, it would be anomalous to conclude that Congress also delegated general authority to sell Pueblo lands.[2] Such a result is wholly "counter-intuitive." *Chemical* at 4201.

Finally, Mountain Bell's interpretation of Section 17 was used to avoid the legislative scheme for rights-of-way and leas-

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[2]Both before and after the Act, Congress legislatively added lands to existing Pueblo reservations. *See, e.g.*, Act of April 12, 1924, ch. 90, 43 Stat. 92; Act of May 23, 1928, ch. 707, 45 Stat. 717; Act of February 11, 1929, ch. 174, 45 Stat. 1161. Under Mountain Bell's interpretation of Section 17, all of these lands could have been sold. Congress has continued to add land to the Pueblo reservations. *See, e.g.*, Act of July 9, 1984, Pub. L. No. 98-344, 98 Stat. 315.

ing. Any transaction otherwise authorized, as well as those that were not, could be undertaken pursuant to Section 17, but independent of all statutory requirements and regulations. Kelly Report at 38-39, 44-45. Indeed, that was the basic appeal of Section 17, but it is highly dubious that Congress intended that the mere act of getting tribal consent under Section 17 could release the parties from the strictures of specific statutes.

The protean administrative construction relied upon by Mountain Bell was born out of an intent to evade the Pueblo Lands Act, undermined key provisions of the Act, as well as other statutes for rights-of-way and leasing, and is dramatically inconsistent with the purposes and structure of the Act.[3] Moreover, the interpretation was only used sporadically after 1933, and was abandoned in 1959. Indeed, the government itself first identified this case as a trespass claim, under 28 U.S.C. § 2415. The Court's decisions in *Chemical* and *Chevron* thus militate strongly against the interpretation advanced by Mountain Bell.

B. THE COURT'S DECISION IN *ONEIDA* CONFIRMS THAT CONGRESS DID NOT RATIFY USE OF SECTION 17 TO CONVEY PUEBLO LANDS

The United States, after agreeing with the Pueblo's position and bringing similar suits of its own, and despite the Interior Department's recommendation that the government file a brief in support of Santa Ana, has adopted the position that Section 17 was authority only to convey rights-of-way, but no other interests in Pueblo lands. The United States agrees with us

[3]Significantly, there was no effort to discern the intent of Congress prior to using Section 17 for conveyances. The Solicitor was not asked for a legal opinion, and neither was the Attorney General. A few officials viewed the interpretation as "doubtful," and when it was communicated by Commissioner Burke to the Secretary, he effectively conceded that Section 17 was not definite authority. Kelly Exs. 39, 41, 64, 69. Nor was the administrative construction communicated to Congress until 1976, and even then with no analysis or explanation. S. Rep. No. 94-148, 94th Cong., 1st Sess. 4-6 (1975); H.R. Rep. No. 94-800, 94th Cong., 2d Sess. 6-7 (1976).

that *United States v. Candelaria's* holding, 271 U.S. 432 (1926), that the Indian Nonintercourse Act applies to the Pueblos, precludes other transactions. U.S. Br. at 10, 27. The government adopts a contrary view as to rights-of-way primarily because it perceives Congress to have "ratified . . . . [the] application of Section 17 to conveyances of rights of way." *Id.* at 24.

The recent decision in *County of Oneida v. Oneida Indian Nation* rebuts this argument by holding that congressional ratification of an illegal transaction requires "plain and unambiguous action."[4] At 4231. The argued-for ratifying acts in *Oneida* were much more direct and express than the language relied upon by the government in this case. The reference to Jemez Pueblo's refusal to "make a contract" was not in any statute, but in a single House Committee report, and no mention was made of the use of Section 17. Indeed, the reference is misleading because contracts with Indian tribes are governed by separate authority. 25 U.S.C. § 81. Additionally, the defective statute that resulted was considered hastily, with no hearings and with barely any deliberation. When it got to the floor, the sponsor and the Chairman of the Committee each gave different, and erroneous, explanations for the bill, all in the face of expressions of concern from other House members that they wanted the Indians fully protected. 67 Cong. Rec. 8633-8634 (1926). If the Committee's intention was to ratify the use of Section 17 "it is odd that the Committee did not communicate it to either House . . . . " *Chemical* at 4196. These

[4]Of moment. *Oneida* invalidated a 175 year old conveyance because it failed to comply with the Indian Nonintercourse Act, notwithstanding decades of administrative acquiescence. The Court of Appeals in *Oneida* specifically noted

> the federal government's poor performance of its statutory obligation to protect the Indians. The congressional directives embodied in the Nonintercourse Acts frequently have been disregarded by the executive branch.

719 F.2d 525, 533 (2nd Cir. 1983). As in *Oneida*, the intent of Congress is determinative.

considerations establish that Congress did not ratify the administrative use of Section 17.

Ratification here, unlike in *Oneida*, is also refuted by subsequent congressional action. In 1928 Congress passed a law definitely making the existing right-of-way statutes applicable to the Pueblos. Act of April 21, 1928, ch. 400, 45 Stat. 442 (codified at 25 U.S.C. § 322). There was no reference to Section 17 in the statute or the legislative history, and the statute comprehensively addressed rights-of-way. In 1933 Congress slightly broadened the category of lands that could be conveyed under Section 16, but it left in all the original conditions. Act of May 31, 1933, ch. 45, § 7, 48 Stat. 111; Resp. App. 36-38. Again, there was no reference to Section 17; indeed, the amendment was unnecessary if Section 17 meant what petitioner contends. Section 16 clearly covered the field of sales of Pueblo land as far as Congress was concerned. In 1948, Congress enacted general authority for rights-of-way of all kinds, expressly referring to the Pueblos. Act of February 5, 1948, ch. 45, § 1, 62 Stat. 17 (codified at 25 U.S.C. § 323, *et seq.*). If the Pueblos could already grant rights-of-way of any kind under Section 17, Congress would not have made the reference. Finally, in 1968 Congress authorized four Pueblos to lease their lands for 99 years, a superfluous statute if Section 17 was authority to lease Pueblo lands without time restrictions. Act of October 12, 1968, Pub. L. No. 90-570, 82 Stat. 1003.

In view of *Oneida* and the unavailability of the government's ratification argument, it might appropriately be suggested that the government effectively agrees with the position of Santa Ana that the Nonintercourse Act and *United States v. Candelaria* forbid all transfers of Pueblo tribal land not authorized by Congress, including rights-of-way. The principles enunciated by *Chemical* and *Oneida*, when applied to the Pueblo Lands Act, clearly support Santa Ana's view that the interpretation of Section 17 as authority to alienate interests in Pueblo lands conflicts egregiously with the intent of Congress, which is controlling.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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MOTION OF PETITIONER FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Petitioner, the Mountain States Telephone and Telegraph Company, respectfully moves this Court for leave to file the attached supplemental brief responding to new arguments raised in Respondent's supplemental brief.

Respectfully submitted,

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PETITIONER'S SUPPLEMENTAL BRIEF

The respondent Pueblo of Santa Ana has filed a supplemental brief purportedly to invite the Court's attention to two of its own opinions, handed down since this case was argued, and to discuss their application to this case. The two recent decisions are but the most transparent pretext. Neither *Chemical Manufacturers Ass'n* v. *Natural Resources Defense Council*, No. 83-1013, decided Feb. 27, 1985, nor *Oneida County* v. *Oneida Indian Nation*, No. 83-1065, decided March 4, 1985, bears significantly on the issues in this case.

Santa Ana's supplemental brief is in fact an effort to repair the tattered fabric of its argument that Section 17 of the Pueblo Lands Act should be given a self-defeating interpretation at odds with the perfectly reasonable administrative interpretation that the Department of the Interior adopted soon after the statute was enacted and has consistently adhered to.

The *Chemical Manufacturers* opinion is another in a line of decisions in which the Court has insisted that such reasonable administrative interpretations be honored when "not inconsistent with the language, goals, or operation," slip op. at 18, of the statute whose meaning is in issue. Contrary to Santa Ana's reiteration of its arguments in the first section of its supplemental brief, the Interior Department's interpretation of Section 17 is consistent with the language of that section. Indeed, no other interpretation that the words of the statute allow makes sense. Its interpretation, furthermore, is consistent with the operation and goal of the Lands Act to remedy what had gone before by confirming the Pueblos' title to lands they were not fairly to be taken as having lost and to establish a Pueblo land regime for the future. Under that regime the Pueblos were protected against involuntary losses of their land but were enabled to engage in consensual land transactions subject to the kind of federal guardianship the uniquely situated Pueblos were thought by Congress to require.

So far as congressional ratification of the Department's construction of Section 17 is concerned — the subject of the second part of the Pueblo's supplemental brief — the opinion in *Oneida* is not in point. In that case the issue was whether, by a subsequent treaty, Congress had ratified a particular alienation of Indian land that was not authorized when it was made. Naturally, the Court insisted upon a "plain and unambiguous" ratification of the unauthorized sale negotiated with the Oneidas by the State of New York. Slip op. at 20, *quoting United States* v. *Santa Fe Pacific R.R.*, 314 U.S. 339, 346 (1941). The ratification here, on the other hand, is the more usual kind of ratification of an agency's construction of a statute. Congress is informed of the agency's construction while it is considering legislation to which the construction is pertinent. Congress accepts the agency's construction by taking it as a premise for its further legislation or at least does not manifest in that legislation or otherwise

any disapproval of it. *Cf. Bob Jones University* v. *United States*, 461 U.S. 574, 599-602 (1983).

Petitioner Mountain Bell (Pet. Br. 36-37) and the Government even more explicitly (U.S. Br. 24-25) have argued that by the Act of May 10, 1926, 44 Stat. 498, Congress effectively ratified the interpretation of Section 17 that the Department of the Interior had by then adopted. Congress believed that the 1926 statute was necessary to authorize the Secretary of the Interior to grant rights-of-way over Pueblo lands without the consent of the affected Pueblos because the Pueblo of Jemez had "persistently refused to make a contract," H.R. Rep. No. 955, 69th Cong., 1st Sess. 2 (1926), voluntarily conveying a railroad right-of-way. The necessary implication is that Congress understood that Jemez could have voluntarily contracted to convey a right-of-way and probably that other Pueblos had done so. As the Government has said, with this understanding "Congress did not amend the Pueblo Lands Act to bar conveyances by the Pueblos without Congressional consent" but instead, in legislating as it did to permit non-consensual grants of rights-of-way, "must be taken to have accepted the premise" that the Pueblos could convey rights-of-way voluntarily. (U.S. Br. 25.)

Confronted with this argument, the Pueblo now belatedly offers the feeble answer that the reference to the Pueblo of Jemez's refusal "to make a contract" is inexact. (Resp. Supp. Br. 7.) The irrelevant observation that contracts with Indian tribes are governed by a statute other than Section 17 does not refute the critical fact that Congress enacted the 1926 statute solely because of the Jemez controversy and not because of any question about voluntary right-of-way conveyances by other Pueblos. Defects in that statute were subsequently remedied by the Act of April 21, 1928, 45 Stat. 442, 25 U.S.C. § 322 *et seq.*, which made applicable to the Pueblos the statutes authorizing non-consensual grants of rights-of-way across Indian lands generally.

The Pueblo also says that the 1948 statute authorizing generally the grant of rights-of-way over Indian lands would not have expressly referred to the New Mexico Pueblos as covered by the statute if Congress had thought that Section 17 was already authority for the grant of rights-of-way by the Pueblos. (Resp. Supp. Br. 8.) That argument is indeed new, but it is wholly mistaken. The General Purpose Rights-of-Way Act of 1948, 62 Stat. 17, 25 U.S.C. §§ 323 *et seq.*, concerned grants of rights-of-way by the Secretary of the Interior, not grants by the Pueblos as authorized by Section 17. Moreover, the 1948 Act was not a conferral of new authority but a restriction of authority that the Secretary already possessed. Before the 1948 Act, the Secretary was authorized to grant rights-of-way over Indian lands, including the Pueblos' lands, without the consent of the affected Indian tribe. That authority was conferred on the Secretary as to Pueblo lands by the statute enacted in 1928 to replace the defective 1926 statute referred to above. (Pet. Br. 36-37.) The 1948 Act was a reform measure, which required the Secretary to obtain the consent of many tribes before he could make such grants over their lands. 25 U.S.C. § 324. The power of the Pueblos under Section 17 to initiate their own right-of-way grants, subject to the Secretary's approval, is a quite different matter. Section 17 neither conferred nor restricted the Secretarial authority to grant rights-of-way that Congress was addressing in the 1948 Act.

The Pueblo also says that the Congress would not have enacted in 1968 legislation authorizing four New Mexico Pueblos to lease their land for 99 years if it had thought that Section 17 "was authority to lease Pueblo lands without time restrictions." (Resp. Supp. Br. 8.) That facile conclusion simply omits the critical context. The Act of October 12, 1968, 82 Stat. 1003, was an amendment to the Act of August 9, 1955, 69 Stat 539, establishing a general limit of 25 years on the length of leases of restricted Indian lands. The legislative

history of that underlying statute (which, as amended, is 25 U.S.C. §§ 415-415d) shows that it was enacted on the understanding that Section 17 *does* allow unrestricted leasing of Pueblo lands by the Pueblos. An Assistant Secretary of the Interior, in a letter to the chairmen of the cognizant committees, described existing laws governing Indian land leases as "unduly restrictive," generally limiting leases to 5 years, but noted that there were exceptions. One of the exceptions he specifically identified was that "lands belonging to Pueblo Indians (act of June 7, 1924, 43 Stat. 636, 641-42) may be leased on a long-term basis for a variety of purposes." S. Rep. No. 375, 84th Cong., 1st Sess. 5 (1955); H.R. Rep. No. 1093, 84th Cong., 1st Sess. 3 (1955). The citation, 43 Stat. 636, is to the Pueblo Lands Act and specifically to Section 17, which appears at 43 Stat. 641-42. In another letter just four days later the Assistant Secretary suggested the inclusion of a savings provision to preserve existing leasing authority, presumably including Section 17 and the other exceptional leasing statutes he had identified. S. Rep. No. 375 at 6. Congress responded by adding Section 6, 69 Stat. 540, 25 U.S.C. § 415d, which says that the general leasing statute is not to be construed as repealing any other statutory leasing authority. This history of the 1955 statute is significant both for its additional confirmation that the Department of the Interior interpreted Section 17 as petitioner Mountain Bell does, and for its demonstration that Congress was informed of Interior's position when it enacted the general Indian-land leasing statute of 1955 and acted to preserve the leasing authority of Section 17.

The amendment of the statute in 1968 to allow 99-year leases by four Pueblos was one of a number of similar exceptions to the general 25-year limitation enacted over the years.* There is no mention of Section 17 in the legislative

*Beginning in 1959 and continuing through 1983. See the statutory development note to 25 U.S.C.A. § 415 (1983 and 1984 Supp.).

history, and the enactment of the 1968 amendment, unlike the 1955 act, therefore reflects no consideration by either the Department or Congress of the relevance of Section 17. See S. Rep. No. 1590, 90th Cong., 2d Sess. (1968); H.R. Rep. No. 1874, 90th Cong., 2d Sess. (1968). Why the amendment was enacted is not clear. It may be that the savings provision of the 1955 statute and Section 17 were overlooked. That would be understandable: since Section 17 had been used almost exclusively for the grant of rights-of-way, its applicability to leases might not have occurred to someone who was not acquainted with the 1955 reference to Section 17. Moreover, since 1924 the Government had granted certain Pueblos the beneficial interest in lands held in trust by the Government, which were in addition to the lands the Pueblos held in fee when the Lands Act was passed (See Resp. Supp. Br. 5 n. 2); there may have been concern that Section 17 did not cover these trust lands. Whatever the reason for the 1968 amendment, it is of slight significance beside the irrefutable proof that the Department of Interior retained in 1955 the understanding of the meaning of Section 17 that it came to in 1926 and that this understanding was conveyed to Congress at a time when it was legislating in the area.

In short, Santa Ana offers nothing in its supplemental brief that bolsters the unpersuasive arguments made in its initial brief. The new sources it cites in fact confirm the soundness of the Interior Department's long-standing interpretation of Section 17.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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